IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.3910 OF 2004

Shashikant Jagannath Saraf .... Petitioner
Vs.
Anil Moreshwar Kulkarni .... Respondent

Shri J.S. Deo with Ms S. Mutalik for
the Petitioner.

Sarvasri R.S. Apte with N.R. Bubna for
the Respondent.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: OCTOBER 25, 2004

P.C:

1. Heard the learned Advocates for the parties. Perused the records.

2. The petitioner challenges the judgment and order passed by the lower Appellate Court setting aside the decree of dismissal of the suit and allowing the application for eviction of the petitioner on the ground of acquisition of suitable alternative accommodation, while confirming the finding of the trial Court on the aspect of failure of the respondent to establish the claim of non-user of the suit premises. The eviction has been also ordered on the ground of bona fide and reasonable need of the premises for the personal occupation of the respondent. It was sought to be

contended that the lease was essentially for the benefit of the members of the joint family and, therefore, the lease was obtained for the joint family and merely because the petitioner has acquired alternative accommodation, the Court below could not have ordered eviction of the other members of the family from the suit premises. Admittedly, the lease was granted in the name of the petitioner. The pleadings of the petitioner in the written statement nowhere discloses the plea to the effect that the lease was in favour of or for the benefit of the joint family. Merely because after obtaining the lease in favour of the petitioner, some of the members of the family of the petitioner or his brothers or sisters were benefited by the use of the leased premises, that itself would not convert the lease in favour of the joint family when, admittedly, the lease agreement is in favour of the petitioner and there was no plea raised to the effect that the lease was in favour of the joint family. Being so, no fault can be found with the finding arrived at by the Court below as regards the acquisition of suitable alternative accommodation and that being the ground for eviction of the petitioner from the suit premises. Since no leasehold interest having been disclosed in favour of the brothers or sisters or the mother of the petitioner in relation to the suit premises, the question of interference in the impugned order on the alleged ground

of the lease being in favour of those members also does not arise. Since the finding arrived at is clearly borne out from the records and does not disclose any sort of perversity, the same do not warrant interference in writ jurisdiction under Article 227 of the Constitution of India. Hence the petition fails and is rejected.

3. On oral request by the learned Advocate for the petitioner, time to vacate the suit premises is extended till 28-2-2005, subject to submitting undertaking by the petitioner and every major member of the petitioner's family as well as those occupying the premises, to be filed before the Registrar (Judl.) of this Court within three weeks from today assuring that the petitioner shall handover the vacant and peaceful possession of the suit premises to the respondent/landlord on or before 28-2-2005 and shall not induct any third person nor shall create any third party interest in the suit premises.